



April 6, 2023

UTAH COUNTY BOARD OF ADJUSTMENT

STAFF REPORT FOR APPEAL #1614

I. APPLICATION:

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| A. APPLICANT | - | Pinyon Creek Solar, LLC |
| B. REQUEST | - | A conditional use request for a proposed solar energy facility as an electrical power generation facility |
| C. LOCATION | - | Approximately 11600 South 4000 West, Sections 13 T9S R1W, Chimney Rock Pass/Elberta area of unincorporated Utah County |
| D. ZONING | - | Mining and Grazing (M&G-1) Zone and |
| E. AREA | - | 270 Acres |

II. STAFF SUMMARY:

Parcel Information

The subject area consists of one parcel comprised of approximately 270 acres. The present use of the parcel appears to be undeveloped grazing land. Adjacent uses to the subject property appear to be similar type uses. The subject parcel is a legally created parcel and appears to be eligible for any permitted or conditionally permitted use allowed in the M&G-1 Zone subject to meeting all applicable standards for a given use.

The parcel in the application does not have frontage along a paved city, county, or state owned Class B road. All access roads to the proposed site are required to meet fire access road standards as specified by the Utah County Fire Marshal. The fire access road improvements will be required from the proposed site to a Utah County approved public road.

It appears the proposed site lies within the Wildland Urban Interface (WUI) area of Utah County, any parcel within the WUI may have additional fire code restrictions at the time a building permit application. The proposed site is not currently included within the annexation policy plan for any adjacent city.

Parcel Zoning

The proposed site is presently located within the Mining and Grazing (M&G-1) Zone (parcel: 61:042:0001). The proposed use of a utility-scale solar photovoltaic power generation facility appears to be consistent with an electrical power generation plant in the M&G-1 zone, which is a permitted conditional use subject to approval by the Utah County Board of Adjustment under Section 12.28.C.3.

Applicant Request – *This section will address the entire area of both appeal 1613 & 1614*

The applicant has proposed to locate a 398 MW utility-scale solar power generation facility on the subject parcels. The applicant has stated the solar facility will comprise a total project area of approximately 3,249 acres, however staff calculated the area to be 2208.11 for Appeal #1613 and 270 acres for Appeal #1614. The application discusses the entire 2478-acre project area as one application and their plan is to develop this site as one project, but it is current Utah County Community Development policy to have conditional use appeals be one contiguous area. Since all parcels in the project area are not contiguous the application has been separated into two contiguous appeals.

The application thoroughly addresses many of the requirements for an electrical power generation plant. The application indicates this type of system is comprised of a 398-megawatt solar photovoltaic panel array, and other structures and uses incidental to solar power generation including inverters, substation, operations and maintenance building, SCADA system, access roads, cabling, fencing, and a 149.5-megawatt battery energy storage system (BESS) for the converting and storing of solar energy to electricity.

The application states the parcels within the RA-5 zone will, “be utilized for Project access purposes only”, but the included site plan does show an area of approximately 20-acres within the RA-5 zone designated for a “plant substation”. All structures within the RA-5 zone must be permitted by the UCLUO.

The application describes the operations and maintenance building as potentially including an office break room, and lavatory, if the O&M building is a manned building it would require the structure to be located on a parcel with paved frontage.

III. APPLICABLE CODES AND ORDINANCES:

The following are ordinances and laws pertaining to this appeal:

1. [U.C.L.U.O. Section 12.28.C.3](#): Identifies an electrical power generation plant as a permitted conditional use in the M&G-1 Zone, subject to the approval by the Board of Adjustment.
2. [U.C.L.U.O. Section 16.80](#): Contains the rules for hearing and deciding appeals for conditional uses.

IV. STAFF FINDINGS:

1. Section 12.28.C.3 of the Utah County Land Use Ordinance lists an electrical power generation plant as a permitted conditional use in the M&G-1 Zone, subject to approval by the Board of Adjustment as a conditional use according to the provisions of Section 16.80. The proposed use would appear to be an electrical power generation plant.
2. A completed application was submitted March 7, 2023, as per Section 16.80.A.
3. The application is for a conditional use which the Board is empowered to approve as per Section 16.80.B.
4. The application appears to meet the requirements of Section 16.80.C.1, which requires the proposed conditional use to not degrade the public health, safety, or welfare due to the following:
5. The proposed use is located in a remote location on a number of very large parcels of property. The facilities associated with the use will have restricted access due to the site being completely enclosed by a fence.
 - The proposed use is for the purpose of generating utility-scale energy from a renewable source, which would appear to be a long-term benefit to the public.
 - The application indicates the proposed use will present no degradation to public health, safety, and welfare related to viewshed, wildlife and natural vegetation, noise, and emissions.
6. The application appears to meet the requirements of Section 16.80.C.2, which requires the proposed conditional use to meet the general purposes and intent of the ordinance, as specified in Section 1.08. Specifically, it would promote efficient and economical utilization, conservation, and production of natural resources (Section 1.08.C) and it would facilitate adequate provision for a general public need (Section 1.08.E).
7. The application appears to meet the requirements of Section 16.80.C-3, which requires the proposed conditional use to be consistent with the "characteristics and purposes" stated for the zoning district involved and the adopted general plan. This conditional use would appear to be consistent with the purposes and intent of the M&G-1 Zone, including:
 - Promoting the conservation of water, land, mineral, and other resources.
 - Providing a location for the development of adequate public facilities to match private development.

It would appear to be consistent with the general plan, including:

- Allowing privately owned utilities required to provide needed public uses in all areas of the county (Policy G, Objective 11, Chapter 1, Utah County General Plan).
- Preserving and protecting natural resources and open space (Objective 13).

8. The application appears to meet the requirements of Section 16.80.C-4, which requires the proposed conditional use be compatible with the public interest and with the characteristics of the surrounding area, due to the following:
 - The expansion and increased capacity of the existing energy system with energy from renewable resources would appear to serve the public interest.
 - The proposed use would appear to be compatible with the characteristics of the surrounding area as the location is in an area that is remote and generally isolated from residential and urban development.
9. The application appears to meet the requirements of Section 16.80.C-5, which requires the proposed conditional use to be shown to not adversely affect local property values. There appears to be no evidence that this conditional use would adversely affect local property values due to the general compatibility with the adjacent properties and their uses, along with the remoteness of the site (see item #7 above). **However, the application did not include any appraisals or other professional statements regarding property values. The Board may want to take this into consideration.**
10. The application appears to meet the requirements of Section 16.80.C-6, which requires the proposed conditional use to comply with all the terms and requirements of the ordinance. Future monitoring of this requirement will be accomplished through the issuance of a building permit for all applicable structures and uses that has been reviewed and approved by all appropriate departments. All applicable structures and uses will be required to meet all applicable setback requirements. The application indicates the proposed use will not be a manned site or have any occupied structures which would require frontage along a paved public road.
11. The application appears to meet the requirements of Section 16.80.C-7, which requires the proposed conditional use to be shown to **not** result in a situation which is cost ineffective, administratively infeasible, or unduly difficult for the provision of essential services. Those services, to the extent needed, appear to be presently available in the area. The un-manned nature of the structure limits the essential services required.

V. STAFF RECOMMENDATION:

That the Utah County Board of Adjustment **approve** Appeal #1614 a conditional use request for a solar energy facility as an electrical power generation plant subject to staff findings included in the staff report and the following conditions:

1. That the Board finds that the conditional use meets the standards found in Section 16.80.C.1 through C.7 of the Utah County Land Use Ordinance.
2. That building permits or other applicable land use permits for all applicable proposed structures and uses be obtained that meet all applicable zoning, building, health, and fire-safety requirements, including applicable setback requirements.

3. That construction and use of the facility comply with all applicable local, state, and federal regulatory standards, including the National Electric Code, as amended. This includes, but is not limited to, regulations related to any applicable threatened or endangered species, along with any impacts to historic, cultural, and archaeological resources.
4. That the facility be constructed and operated in compliance with all applicable requirements of the Federal Aviation Administration (FAA), particularly as it relates to potential solar glare impacts.
5. That the applicant submits and receive approval from the Utah County Engineer of any applicable Storm Water Pollution Protection Plan (SWPPP) and land disturbance permit prior to the issuance of any permits for the establishment of the solar energy facility.
6. That a signed access agreement be provided prior to the issuance of any permits for the establishment of the solar energy facility that provides for site access and maintenance across any parcels not adjacent to a public road.
7. That all structures be removed from the property if the site's use as a solar energy facility is ever abandoned for more than one (1) year. A decommissioning plan shall be provided prior to the issuance of any permits for the establishment of the solar energy facility. The decommissioning plan shall include provisions for the removal of all structures, foundations, electrical equipment, internal or perimeter access roads, restoration of soil and vegetation of disturbed areas, along with a plan ensuring financial resources will be available to fully decommission the site.
8. That any facility or structure occupied by humans meet all access requirements of UCLUO Sections 4.44 and 4.48, as amended.
9. Evidence of access agreements or other recorded agreements that allows the facility owners to construct and maintain the proposed subject area for an electrical power generation plant and which grants the facility owners access to all areas of the proposed subject area from a city, county, or state owned road to and throughout the proposed site.
10. An electrical power generation plant is not currently a permitted or conditionally permitted use in the RA-5 zone; therefore, all structures associated with an electrical power generation plant must be located within the M&G-1 Zone, unless expressly permitted by the UCLUO.
11. That the termination date for obtaining a permit pursuant to this approval be set as April 6, 2024.